

REMARKS

Upon entry of the present amendment, claims 1-56, 58-60 and 62 are pending in the above-referenced patent application and are currently under examination. Claims 51, 58 and 62 have been amended. Claims 57 and 61 have been canceled. Claims 1-50, 55 and 56 have been withdrawn. Reconsideration of the application is respectfully requested.

Support for the amendments to claim 1 can be found in canceled claims 57 and 61 as filed. Claims 58 and 62 have been amended to correct claim dependency in view of canceled claims 57 and 61. Applicants believe no new matter has been added by the amendments to the claims.

The claims are rejected under 35 U.S.C. § 102(b). Each of these rejections is addressed below in the order set forth by the Examiner.

I. FIRST REJECTION UNDER 35 U.S.C. § 102(b), OVER OGLE

Claims 51-54 and 57-60 have been rejected under 35 USC § 102(b) as allegedly being anticipated in view of Ogle (U.S. Patent No. 6,113,636). Applicants respectfully traverse the rejections in view of the comments below.

A claim is considered to be anticipated under 35 USC § 102(b) if “the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.” In order for a claim to be anticipated by a reference, the reference must teach every element of the claim (MPEP § 2131):

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

As discussed in detail below, the presently claimed invention is not anticipated in view of any of the cited references as all the references fail to teach every element set forth in the claims of the instant invention.

Applicants respectfully note that claim 51 has been amended to incorporate the limitations of canceled claims 57 and 61. Amended claim 51 now reads:

A device for inhibiting plaque formation, promoting elastin production, or both, the device comprising:

at least one implantable medical device; and

at least one zinc-containing component coupled with the device, wherein the at least one zinc-containing component provides ionic zinc when the device is implanted, and wherein the at least one zinc-containing component is selectively deposited over a portion of the device.

Applicants note that canceled claim 61, now incorporated into claim 51, is not rejected under 35 U.S.C. § 102(b) as being anticipated by Ogle. Canceled claim 61 is drawn to where the zinc-containing component is “selectively deposited over a portion of the device.” Ogle does not teach or disclose selective deposition of the zinc-containing component over a portion of the device. Thus, the amended claims of the instant application are not anticipated by Ogle, as Ogle fails to teach all of the elements of amended claim 51. Accordingly, Applicants respectfully request that the Examiner withdraw this aspect of the rejection.

II. SECOND REJECTION UNDER 35 U.S.C. § 102(b), OVER TAM *et al.*

Claims 51, 61 and 62 have been rejected under 35 USC § 102(b) as allegedly being anticipated in view of Tam *et al.* (U.S. Patent No. 6,261,320). Applicants respectfully traverse the rejections in view of the comments below.

Tam *et al.* teaches a radioactive prosthesis where the prosthesis is coated with a radioisotope. It is advantageous in the prosthesis of Tam *et al.* that the radioisotope be highly resistant to leaching or release under physiological conditions (col. 26, lines 63-66). In order to prevent leaching or release, the isotope layer is covered with a coating layer to:

protect the isotope layer from mechanical abrasion or other injury which may strip the isotope layer of radioisotopes and thus reduce its activity. Furthermore, the coating layer may **inhibit migration or other leaking of isotope** in an aqueous (blood) environment. (col. 22, lines 51-56; emphasis added)

The zinc-containing component taught in Tam *et al.* is the isotope layer (see col. 27, line 53 to col. 28, line 17). A preferred isotope layer of Tam *et al.* is $\text{Zn}_3(^{32}\text{PO}_4)_2$, comprising radioactive

³²P (col. 28, line 10). Thus, the radioactive zinc-containing component of Tam *et al.* is **not** released into the surrounding environment of the prosthesis of Tam *et al.*, and ionic zinc cannot be provided by the zinc-containing component of Tam *et al.*

In stark to Tam *et al.*, the zinc-containing component of the instantly amended claims **"provides ionic zinc when the device is implanted"** (amended claim 51 and canceled claim 57, emphasis added). Applicants note that canceled claim 57, now incorporated into claim 51, is not rejected under 35 U.S.C. § 102(b) as being anticipated by Tam *et al.* Thus, the amended claims of the instant application are not anticipated by Tam *et al.*, as Tam *et al.* fails to teach all of the elements of amended claim 51. Accordingly, Applicants respectfully request that the Examiner withdraw this aspect of the rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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